

Indiana Department of State Revenue

Revenue Ruling #2000-04IT

December 19, 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Adjusted Gross Income Tax, Supplemental Net Income Tax and Gross Income Tax –
Income Tax Consequences of Proposed Reorganization

Authority: IC 6-3-1-11, IC 6-3-8-2, Rule 45 IAC 1.1-6-8, IC 6-2.1-3-25, IC 6-3-1-19, Rule 45
IAC 1.1-2-13

The taxpayer requests the Department to rule, should the taxpayer conclude to reorganize as described herein, whether or not:

1. The mergers that will take place as part of that reorganization shall be nontaxable events for Indiana income tax purposes; and
2. The surviving Delaware limited liability partnership is a recognized partnership and shall be an exempt partnership for Indiana gross income tax purposes.

STATEMENT OF FACTS

The taxpayer is a cooperative corporation formed under Ohio law. It is headquartered in Indiana and markets various products. The taxpayer currently has approximately 100 voting member-shareholders that are themselves cooperatives. In addition to the taxpayer's 100 voting member-shareholders, the taxpayer currently has approximately 6,500 shareholders holding various classes of non-voting stock, which is non-transferable without the consent of the taxpayer and which is not entitled to share in the profits of the taxpayer.

The taxpayer is currently considering reorganizing as a Delaware limited liability partnership. In order to effect this reorganization, the taxpayer will form an Ohio corporation (the "Ohio Corporation") as a wholly-owned subsidiary of the taxpayer and the Ohio Corporation will form a wholly-owned Delaware limited liability company (the "LLC"). The Ohio Corporation and the LLC will then organize a Delaware limited liability partnership (the "LLP"), which will be owned 99% by the Ohio Corporation and 1% by the LLC.

Because Ohio cooperative law does not allow the merger of a cooperative directly into a limited liability partnership, the Ohio Corporation will also organize a wholly-owned Delaware corporation (the "Delaware Corporation"). The taxpayer will merge with and into the Delaware Corporation, which in turn will immediately merge with and into the LLP, with the LLP being the surviving entity.

The Internal Revenue Service will treat the merger of the taxpayer into the Delaware Corporation and the merger of the Delaware Corporation into the LLP as a tax-free reorganization under Internal Revenue Code Section 368(a).

Following this restructuring, all of the business, property and rights of the taxpayer will be acquired, owned and operated by the LLP. The shareholders of the taxpayer will receive, at the effective time of the merger of the taxpayer into the Delaware Corporation, shares in the Ohio Corporation identical in number and class to the shares held in the taxpayer, and the shareholders of the taxpayer will become shareholders of the Ohio Corporation.

For federal income tax purposes, neither the LLC nor the LLP will elect to be treated as associations taxable as corporations. As a result, both the LLC and LLP will be disregarded entities for federal income tax purposes and the Ohio Corporation will be considered to be a "corporation operating on a cooperative basis" for purposes of Subchapter T (Section 1381) of the Internal Revenue Code. The LLP, also, will be disregarded for federal income tax purposes because the LLC will be disregarded leaving only one partner in the partnership.

DISCUSSION

For Indiana adjusted gross income taxation and supplemental net income taxation, pursuant to IC 6-3-1-11 and IC 6-3-8-2, the merger of the taxpayer into the Delaware Corporation and the subsequent merger of the Delaware Corporation into the LLP will follow the federal code, i.e., both transactions will be treated as tax-free reorganizations resulting in no Indiana adjusted gross income tax or supplemental net income tax liability for the taxpayer, the Delaware Corporation, the Ohio Corporation, the LLP or their respective members, shareholders, or partners.

Similarly, for Indiana gross income taxation purposes the treatment afforded a reorganization by the Internal Revenue Service determines its taxability. Rule 45 IAC 1.1-6-8 provides that the Department will generally look to the treatment by the Internal Revenue Service in determining whether or not a reorganization is valid and, therefore, qualifying for the exclusion from gross income taxation that is provided by this regulation.

Such is the case here, with the merger of the taxpayer into the Delaware Corporation and the subsequent merger of the Delaware Corporation into the LLP not giving rise to gross income tax liability to the taxpayer, the Delaware Corporation, the Ohio Corporation, the LLP or their respective members, shareholders or partners.

As indicated in the “Statement Of Facts”, the LLP formed by the Delaware Corporation and the LLC will be disregarded for federal income tax purposes because the LLC is disregarded leaving only one partner.

Because the Internal Revenue Code is not incorporated by reference into the Indiana Gross Income Tax Act, the Department’s regulations and rulings govern the treatment of the LLP. The Department has ruled (Revenue Ruling #2001-09IT) that if a partnership is disregarded for federal income tax purposes the Department is not precluded from treating the partnership as a validly existing partnership for gross income tax purposes.

The LLP will be formed pursuant to Delaware partnership statutes, validly existing laws which share similarities to Indiana partnership statutes, therefore, based on Revenue Ruling #2001-09IT, the LLP will be recognized as a validly existing partnership for Indiana gross income tax purposes.

The LLP is a partnership and IC 6-2.1-3-25 provides that a partnership, as defined by IC 6-3-1-19, is exempt from gross income tax, provided it is not a publicly-traded partnership treated as a corporation under IRC Section 7704. In the instant case, the LLP will not be a publicly-traded partnership that is treated as a corporation under IRC Section 7704, hence, the LLP will not be subject to gross income tax.

As provided by Rule 45 IAC 1.1-2-13, the Ohio Corporation will be taxable on its “net distributable income” from the LLP (as calculated pursuant to Section 704 of the Internal Revenue Code and its prescribed regulations) that is derived from Indiana sources.

RULING

The Department rules that for adjusted gross income taxation and supplemental net income taxation purposes:

1. No gain or loss will be recognized by the taxpayer, the Delaware Corporation, the Ohio Corporation or the LLP as a result of the taxpayer's merger into the Delaware Corporation and the subsequent merger of the Delaware Corporation into the LLP; and
2. No gain or loss will be recognized by the members or shareholders of the taxpayer, the members or shareholders of the Delaware Corporation, the members or shareholders of the Ohio Corporation, or the partners of the LLP as a result of the taxpayer's merger into the Delaware Corporation and the subsequent merger of the Delaware Corporation into the LLP.

The Department rules that for gross income taxation purposes:

1. The taxpayer, the Delaware Corporation, the Ohio Corporation and the LLP will incur no taxable gross receipts as a result of the taxpayer's merger into the Delaware Corporation and the subsequent merger of the Delaware Corporation into the LLP;

2. The members or shareholders of the taxpayer, the members or shareholders of the Delaware Corporation, the members or shareholders of the Ohio Corporation and the partners of the LLP will incur no taxable gross receipts as a result of the taxpayer's merger into the Delaware Corporation and the subsequent merger of the Delaware Corporation into the LLP; and
3. The LLP is a recognized partnership and will be exempt from gross income tax. The Ohio Corporation will be taxable on the net distributive income from the LLP that is derived from Indiana sources.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF STATE REVENUE